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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,728	07/02/2003	Vasco Desousa	00315-420001 / D2286	5784
26161	7590	07/27/2004	EXAMINER	
FISH & RICHARDSON PC 225 FRANKLIN ST BOSTON, MA 02110			MENDOZA, MICHAEL G	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 07/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/612,728

Applicant(s)

DESOUSA ET AL.

Examiner

Michael G. Mendoza

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-20 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 02 October 2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 10, 14, 15, 19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Maddocks et al. 5211656.

3. Maddocks et al. teaches a graspable housing defining a cavity therein; a positionable member rotatably connected to the housing (col. 4, lines 44-65) and partially disposed with the housing cavity, the positionable member including a teething portion defining a teething surface spanning a limited extent of a periphery of the positionable member; the positionable member rotatable with respect to the housing to selectively expose the teething surface for use and to cover the teething surface for storage (col. Lines 44-65); wherein the teething portion defines a sealed cavity therein; and further including a handle extending outwardly from the housing.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 2-4, 7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maddocks et al. in view of Girau 5059215.

6. Maddocks et al. teaches the baby teether of claim 1. It should be noted that Maddocks et al. fails to teach wherein the positionable member further includes a rattle portion spanning an opposite extent of the periphery of the positionable member.

Girau teaches a device with a common rattle portion (fig. 1). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the rattle portion of Girau for entertaining/amusing/soothing an infant. Furthermore, it well known in the art of pacifiers and teethers to use a rattle to amusing an infant using the pacifier/teether.

7. Maddocks/Girau teaches the baby teether of claim 1, wherein the rattle portion defines a rattle cavity therein; including noise element loosely contained within the rattle cavity (fig. 1, '215); wherein the teething surface and a surface of the rattle portion are of different materials; wherein the teething surface is softer than the surface of the rattle portion.

8. Claims 5, 6, 11, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maddocks/Girau as applied to claims 2-4 above, and further in view of Everett 6643884.

9. Maddocks/Girau teaches the teether of claim 2. It should be noted that Maddocks/Girau fails to teach wherein a wall of the teething portion is transparent.

Everett teaches a device with a common transparent wall for allowing an infant to see moving objects. Therefore, it would have been obvious to one having ordinary skill

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in the art at the time the invention was made to include the transparent wall of Everett to stimulate an infants brain (col. 2, lines 21-36).

10. Maddocks/Girau/Everett teaches the teether of claim 10, further including a liquid contained with the sealed cavity (col. 2, lines 21-33, '884)

11. As to claim 12, Maddocks/Girau/Everett fails to specifically teach wherein the liquid comprises water. However, it is well old and well known in the art of pacifier and teethers to use water inside of a pacifier/teether to sooth a teething infant. Therefore, it would have been obvious to one having ordinary skill in the art to use water as the liquid within the teether because it old and well known in the art to aid and soothing an infants teeth. Furthermore, the Applicant has not disclosed why the particulars of the liquid are of importance or solve a state problem or provide an advantage over the prior art.

12. Claim 9 rejected under 35 U.S.C. 103(a) as being unpatentable over Maddocks/Girau as applied to claim 2-4 above, and further in view of McKee 4569349.

13. Maddocks/Girau teaches the baby teether of claim 2. It should be noted the Maddocks/Girau fails to specifically teach wherein the teething surface comprises a teething material having a durometer of at most about 80 Shore A.

McKee teaches a device with a common teething surface comprising a teething material having a durometer of at most about 80 Shore A. Therefore, it would have been obvious to one having ordinary skill in eh art at the time the invention was made to you the teething material of McKee for is resilient and nontoxic properties and its ability to resist cutting by an infant's teeth (col. 2, lines 33-40).

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14. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maddocks et al. in view of Hinshaw 6447536.

15. Maddocks et al. teaches the baby teether of claim 15. It should be noted that Maddocks et al. fails to teach wherein the handle has a textured teething surface.

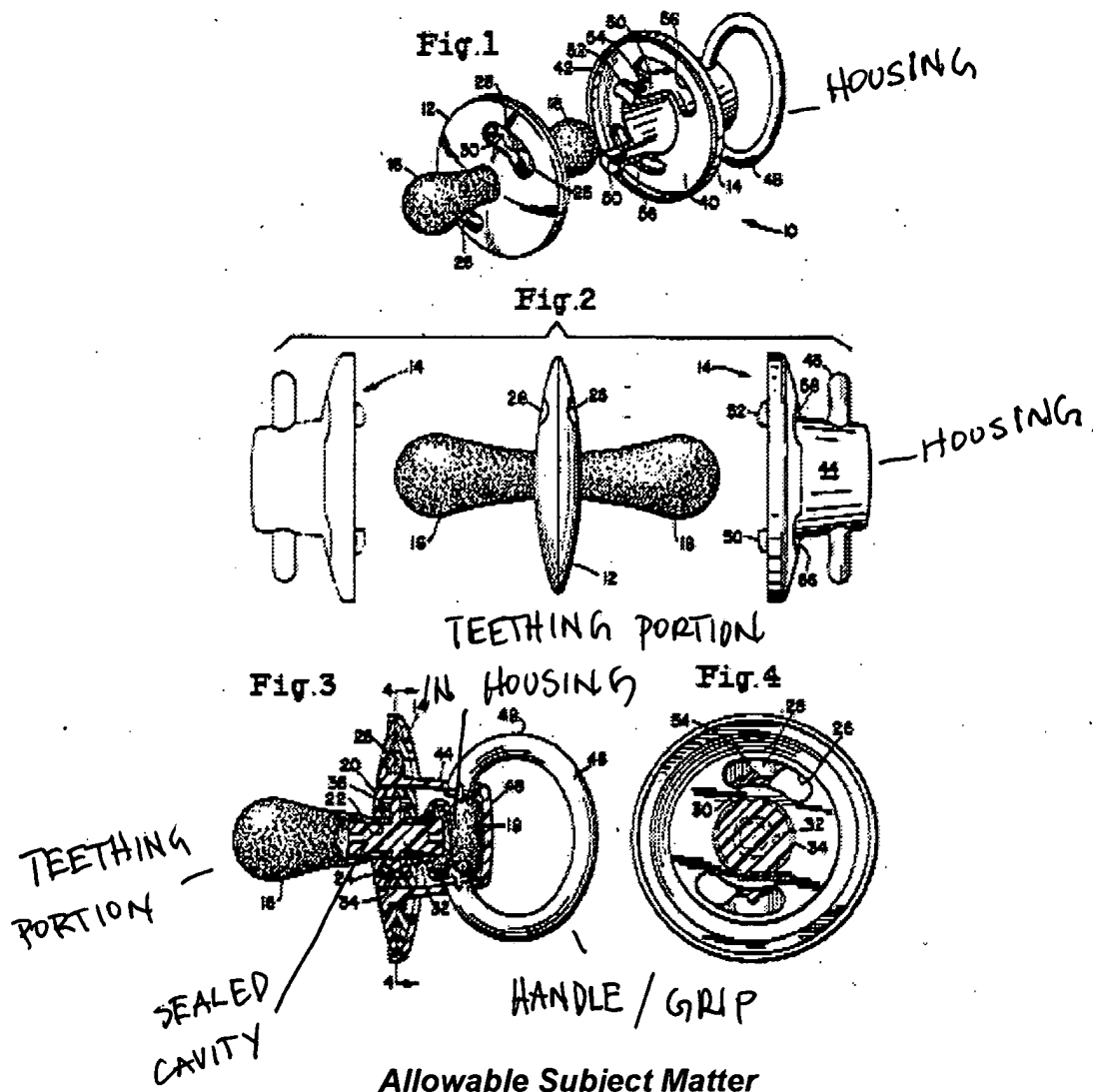
Hinshaw teaches a device with a common handle having a textured teething surface (see figs. 1-10) for allowing an infant to teeth on different textures. Therefore it would have obvious to one having ordinary skill in the art to use the textured handle of Hinshaw to provide more than one teething texture for an infant to bite (col. 2, lines 6-8).

16. Claim 17 and 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maddocks et al. in view of Smith et al. 5711759.

17. Maddocks et al. teaches the baby teether of claim 1. It should be noted that Maddocks et al. fails to teach wherein the teething surface is textured for gum stimulation.

Smith et al. teaches a device with a common textured teething surface (see figs. 1, 2, 4, 6, 10, and 11) for massaging gums. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the textured teething surface of Smith et al. to provide strong and healthy teeth and gums (col. 1, lines 50-55).

18. Maddocks/Smith teaches the baby teether of claim 1 wherein the teething surface includes discreet ribs extending therefrom (see figs. 1, 2, 4, 6, 10, and 11, '759).



Allowable Subject Matter

19. Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (703) 305-3285. The examiner can normally be reached on Mon.-Fri. 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dawson can be reached on (703) 308-4304. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



MM
July 25, 2004



GLENN K. DAWSON
PRIMARY EXAMINER